IN THE

Supreme Court of the United States

October Term 1904

A. L. SMALLEY and F. MCCLELLAN,
Plaintiffs in Error,

vs.

GEORGE F. LAUGENOUR and JANE LAUGENOUR,
Defendants in Error.

No. 364 97

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF DEFENDANTS IN ERROR

(Submitted under the 20th rule)

MOTION TO DISMISS OR AFFIRM

Come now Geo. F. Laugenour and Jane Laugenour, defendants in error, and move the Court to dismiss the Writ of Error herein, or to affirm the judgment and decree for the following reasons:

1. That this Court has no jurisdiction herein.
2. That no federal question is involved herein.

H. D. CROW,
JAS. A. WILLIAMS,
of Counsel.

W. C. KEEGAN,
Counsel for Defendants
in Error

STATEMENT.

The Statement made by Plaintiffs in Error is incomplete in the following respects.

The petition in involuntary bankruptcy filed by Geo. F. Laugenour claimed the real estate involved in this Writ of Error as exempt to the bankrupt under the laws of the State of Washington, and in said petition, the names of all of the creditors of the bankrupt including Plaintiffs in Error, were given, with their place of residence, and on said petition Geo. F. Laugenour was adjudged a bankrupt on May 11, 1899 (two days before the execution sale), and on said day all of the creditors of the bankrupt, including Plaintiffs in Error were notified of the proceedings which had been taken. (Trans. pp. 11 and 21). The claim of exemption was specifically made under the statutes of Washington relating to the exemptions and was not confined to a claim of homestead.

It is not correct that the decision of the State Supreme Court rested entirely, or at all, upon a construction of the Act of Congress of July 1, 1898 (30 U. S. Stats. at large, 544), but the decision rested entirely upon a construction and application of the statutes of the State of Washington.

ARGUMENT.

MOTION TO DISMISS OR AFFIRM.

This motion to dismiss or affirm was presented in

the October term, 1903, but a decision on the motion was postponed. It is apparent from the brief of Plaintiffs in Error that the sole ground on which it is claimed that a federal question exists, is because their judgment lien was acquired prior to four months preceding the filing of the petition in bankruptcy, and that such liens are excepted from the operation of a discharge in bankruptcy and award of exemptions, and that this claim to immunity from the effect of the discharge in bankruptcy and award of exemptions was plead in paragraph three of the reply. (Plaintiffs' in Errors brief, p 17). While it could be urged with some force that the judgment lien of Plaintiffs in Error was not affected by the discharge in bankruptcy, yet there is no foundation for such a claim under the award of exemptions. The United States statute does not attempt to specify particularly what is or what is not exempt property, but the bankrupt is protected in all the exemptions which he is entitled to claim under the law of the state where the adjudication in bankruptcy has been made.

"This act shall not affect the allowance to bank-
"rupts of the exemptions which are prescribed by the
"State laws in force at the time of the filing of the peti-
"tion in the State wherein they have had their domicile
"for the six months or the greater portion thereof im-
"mediately preceding the filing of the petition."
(Bankrupt Act, Sec. 6.)

By Section 7 (8) of the Act of Congress relating to bankruptcy, it is made the duty of the bankrupt to

file schedules of his property, which schedules must contain "a claim for such exemptions as he may be entitled to."

The rights of a bankrupt to exempt property are exactly the same as are given him by the State statute, and if the exempt property is not subject to levy and sale under the State statute, then it is in no way charged to respond to such judgment lien under the Act of Congress relating to bankruptcy. Prior to the decision of this case by the Supreme Court of Washington, the same Court had held that a selection of exempt property might be made at any time before sale and that an execution sale thereof after such selection was ineffectual to pass title to the purchaser; that if no selection was made, but the property in fact was exempt, no title would pass to the purchaser at execution sale.

Wiss vs. Stewart, 16 Wash., 376.
Asher vs. Sekofsky 10 Wash., 379.

It follows from the construction which has been placed by the Supreme Court of Washington upon the statutes of that state, that if a selection of the property involved in this action, under claim of exemptton was made before a sale, Plaintiffs in Error acquired absolutely no title or interest in the real estate under the execution sale. If no selection was made under a claim of exemptions, but the real estate was in fact exempt from sale under execution, then no title or inter-

est could be, or was, acquired by Plaintiffs in Error as purchasers at the execution sale. What is and is not a proper selection or claim of exemptions under the laws of the State of Washington, is a question over which the Courts of that state have exclusive jurisdiction and their decisions are not subject to review by this Court.

From the opinion of the State Supreme Court it is at once apparent that the proceedings in bankruptcy, whereby Geo. F. Laugenour was discharged as a bankrupt, and this real estate was set aside as exempt, were only referred to for the purpose of ascertaing whether there had been an adjudication on the questions of exemptions. Under the decisions in *Wiss vs. Stewart*, *Supra*, and *Asher vs. Sekofsky*, *Supra*, if the property was in fact exempt, then the execution sale was void, irrespective of whether it had ever been claimed as exempt by Defendants in Error. The State Supreme Court examined into the regularity of the proceedings in bankruptcy for the sole purpose of determining whether there had been a valid adjudication of exemptions, and that is the only question relating to the bankruptcy proceedings that was ever considered or decided. The Act of Congress relating to bankruptcy does not attempt or purport to give Plaintiffs in Error any higher right under their judgment lien than the state statute affords. It was wholly immaterial to the decision whether the order awarding exemptions made by the District Judge related back to the date that the claim was made in the schedules in bankruptcy

or not, as the whole question was, whether a claim of exemptions had been made, whether the property was in fact exempt, or whether there had been an adjudication of exemption.

The Supreme Court of Washington in this case has held that the claim of exemption was properly made, and under previous rulings of that Court cited above, it necessarily followed that Plaintiffs in Error had acquired no right or title to the real estate in question by the execution sale. This is not a case where an exemption is claimed against a lien founded in contract where the parties have deliberately charged their property with the payment of an indebtedness, but where it is sought to wrest from Defendants in Error by the strong arm of the law, property which is exempt to them from seizure of levy under an ordinary judgment.

"If therefore, the property in question was exempt "from execution at the time the same was made under "execution issued on the respondents' judgment, the "respondents acquired no title thereto by their pur- "chase at the execution sale, and consequently have no "title on which they can maintain the present action. "Now the appellants were at liberty to establish this "fact in one or both of two ways. They could plead "the facts showing the property to have been exempt "from execution at the time of the sale, thus making "the question directly an issue in the state court, or "they could plead and prove that the question had been "once adjudicated between the parties in a Court of "competent jurisdiction, having the parties and the

"subject matter before it." (Opinion State Supreme Court, Trans., p. 26.)

The allegations contained in paragraph 3 of the reply of Plaintiffs in Error, out of which it is claimed the federal question arises, were not in any way material to the decision rendered by the State Supreme Court. The theory of Plaintiffs in Error as shown by said paragraph 3 was that because their judgment lien had been acquired prior to four months preceding the filing of the petition in bankruptcy, that therefore their judgment lien was not affected by the discharge in bankruptcy granted the bankrupt. For the purpose of argument, concede this to be true. In what way does that affect the rights of Defendants in Error to claim this real estate as exempt? A judgment lien is one question, and the right to enforce such judgment lien against exempt property is entirely another question. Plaintiffs in Error in their reply, do not claim that the Act of Congress relating to bankruptcy afforded them any immunity from the awarding of the exemptions authorized by the state statutes, but their claim was that their lien could not be taken away by the discharge in bankruptcy. This theory of the case was clearly recognized by the State Supreme Court wherein it is said.

"Lastly it is said that the order of the Court set-
"ting apart the property as exempt, does not purport
"to, nor does it in law effect existing liens upon the
"property set apart as exempt, and unless the liens

"thereon be such as the law voids of its own force, such "liens may be enforced in the State Court against and "to the extent of the property affected by the lien, "notwithstanding the order setting it apart as exempt, "and the discharge of the debt in bankruptcy. In cases "of lien which can exist independent of the question "whether or not the property is exempt, undoubtedly "the rule here invoked would be applicable; but the lien of "a general judgment is not such a lien. It is a lien "upon real property only, which is not exempt. Hence "if this property was exempt at the time of the filing of "the petition in bankruptcy, the judgment under which "it was sold was not a lien thereon and to assume that "the judgment was a lien, is to assume that it was not "exempt—the very question at issue." (Opinion State Supreme Court, Trans., p. 28.)

It appears too plain to require argument that the State Supreme Court did not in any way attempt to pass upon any right or alleged right of Plaintiffs in Error arising out of any federal statute. The decision is based solely upon the construction and application of state statutes, with which this Court has nothing to do. This is entirely borne out by the petition for rehearing filed by Plaintiffs in Error in the Supreme Court of Washington. An argument was made in that Court by Defendants in Error; (1) that by the discharge in bankruptcy, the lien of Plaintiffs in Error under their judgment was destroyed, under the provisions of Sec. 67f of the Bankrupt Act; (2) that even if the lien of the judgment was not destroyed by the discharge in bankruptcy, the execution sale was void because the real estate had been claimed by Plaintiffs in Error as exempt prior to the execution sale,

and the exemption had been allowed by the United States District Judge. The alleged federal question on which Plaintiffs in Error are relying, arises out of the first contention made by Defendants in Error shown above. This question was never passed upon by the Supreme Court of Washington as is shown by the last quotation from the opinion above, and from the following statement contained in Plaintiffs' in Errors petition for rehearing, as follows:

"Both parties assumed that the case would be de-
"cided by Section 67f of the act, to which this Court
"makes no reference." (Trans., p. 31.)

The Supreme Court of Washington having decided the case on other grounds than those involving the alleged federal question, this Court has no jurisdiction to review such decision.

The fact should not be lost sight of that before the execution sale, Plaintiffs in Error were notified of the proceedings in bankruptcy in the manner provided by the Bankrupt Act. Had they desired to contest the claim to exemptions, they could have done so; had they desired to appeal from the order of the District Judge in allowing the exemptions, they had that privilege; not having availed themselves of their right to contest the claim to exemptions in the District Court of the United States, or to appeal from the order made therein awarding the property as exempt, they are not now in a position to question the order adjudging the the real estate as exempt.

The only jurisdiction of this Court to review a final judgment of the Supreme Court of a state in a case of this character, arises under Section 709 of the United States Revised Statutes. It has been held repeatedly by this Court that no jurisduction exists over the final judgment of a State Court on a writ of error, except in the cases specified in said Section 709, and the exercise of such jurisdiction is limited by that Section with great care and in plain terms. It gives a writ of error where a party claims a title, right, privilege or immunity under a law of Congress, or authority exercised under the United States statutes, and the decision is against the right claimed. If it were a fact that a federal question was relied upon by Defendants in Error they would not be entitled to a Writ of Error unless the decision was against the right claimed.

The policy of Congress in giving jurisdiction to the Supreme Court of the United States to review decisions of the Supreme Courts of the different states has been to so restrict such jurisdiction as to simply enable the Federal Court to protect the general government from an invasion of its powers by a state government. Where a Federal Court has by adjudication, awarded any right or relief, and a State Court by its judgment enforces, recognizes or follows such adjudication, then the Supreme Court of the United States has no jurisdiction to review such action of the State Court, even though the previous action of the Federal Court so recognized and enforced by the State Court, was

erroneous or without jurisdiction. If the order of the District Judge setting this real estate aside to Geo. F. Laugenour as exempt, was erroneous or without jurisdiction, the State Court having recognized such order, this Court is without jurisdiction to review its decision.

Abbott vs. National Bank of Commerce, 175 U. S., 409.

Generally on the contention that no federal question is involved in this Writ of Error, we cite the following cases:

Baker vs. Baldwin, 187 U. S., 61.
Lynd vs. Lynd, 181 U. S., 183.
Linton vs. Stanton, 12 How., 423.
State of Missouri vs. Andriano, 138 U. S., 597.
Fulton vs. McAffee, 16 Pet., 149.
Calcote vs. Stanton, 18 How., 243.
Ryan vs. Thomas, 4 Wall., 603.
Roosevelt vs. Meyer, 1 Wall., 512.
De Lamars Nevada Gold Mining Co. vs. Nesbitt, 177 U. S., 523.

Plaintiffs in Error allege no facts in their reply showing that they claim any right, title, privilege or immunity under any statute or authority of the United States, which right, title, privilege or immunity so pleaded and claimed has been denied them by the State Court.

Hoyt vs. Thompson, 66 U. S., 518.

The Steamboat Victory, 73 U. S., 382.
Home for Incurables vs. New York, 187 U. S., 155.

Even if a federal question was raised, it is apparent from the opinion of the Court that it was not decided and the decision of such question was unnecessary to the opinion of the Court.

Chouteau vs. Gibson, 111 U. S., 200.
Murdock vs. Memphis, 20 Wall, 636.
Detroit City Railroad vs. Guthard, 114 U. S., 133.
Bridge Proprietors vs. Hoboken L. & I. Co., 68 U. S., 143.
Johnson vs. Rick, 137 U. S., 300.
County of Cook vs. Calumet & Chicago Canal Co., 138 U. S., 635.

The most that can be said by Plaintiffs in Error is that by paragraph 3 of their reply, they allege that their judgment lien was acquired prior to four months before the filing of the petition in bankruptcy, and was therefore not affected by the discharge in bankruptcy. As has been above shown, this question was not necessary to the decision of the State Court, was not passed upon, and was directly held to be immaterial to the decision of the case. (Trans., p. 28.)

Plaintiffs in Error have been left by the Supreme Court of the State of Washington in exactly the posi-

tion they were in before their execution was issued on April 12, 1899. Their judgment so far as it is affected by that decision, remains as it was, and is a lien on any property of Defendants in Error in Lincoln County, Washington, to the same extent as it would have been had said decision never been rendered, except that there is an adjudication protecting the real estate involved here as exempt to Defendants in Error under the laws of the State of Washington.

The laws of the State of Washington exempting homesteads are as follows:

"The homestead is exempt from execution or forced "sale except as in this chapter provided."

Sec. 5217 Ballinger's Ann. Codes and Stat. of Washington.

"The homestead is subject to execution or forced "sale in satisfaction of judgments obtained—

"1. On debts secured by mechanics, laborers or "vendors liens upon the premises.

"2. On debts secured by mortgages on the prem- "ises executed and acknowledged by the husband or "wife or by an unmarried claimant."

Sec. 5218 Ballinger's Ann. Codes and Stat. of Washington.

The argument made by Plaintiffs in Error at page 21 of their brief is a criticism on the state court for giving effect and force to the orders and decisions of the United States District Court. They are not complaining

because the State Supreme Court failed or refused to give effect or force to any order or decision of the United States District Court. The state court so far as it has passed upon any Federal statute or any order or judgment of a federal Court, has given full force and effect to such statute, order and judgment, and no authority of the United States Government has in any way been invaded.

Plaintiffs in Error are compelled even in their own brief to admit that their real grievance with the Supreme Court of the State of Washington is that "such exemption and denial being accomplished by the "holding of the State Supreme Court, that the order "of the bankruptcy Court, setting the property aside as "exempt, *was made with jurisdiction.*" Therefore, in order for this Court to retain jurisdiction, it is necessary to hold that a Federal question arises because force and effect was given to the order made by the United States District Judge setting this property aside as exempt.

If it should be held that the decision of the Supreme Court of Washington giving effect to the order made by the United States District Court awarding the real estate involved here as exempt, involves a federal question, such question was not raised in the pleadings of Plaintiffs in Error, and has never been raised until the writ of error was sued out. The contention of Plaintiffs in Error is that the federal question was pleaded in paragraph 3 of their reply in the state

Court. An examination of that paragraph of the reply will show that the alleged federal question on which Plaintiffs in Error are now relying, was not suggested in any way, until the filing of the petition for rehearing in the State Supreme Court and this was too late. (Trans., p. 29.)

Miller vs. Texas, 153 U. S., 535.
Weber vs. Rogan, 188 U. S., 10.

THE MERITS.

If any federal question exists in this writ of error, it is apparent that it is confined to that portion of the opinion of the State Supreme Court holding that there had been an adjudication made by the United States District Court that the real estate in controversy was exempt, and in holding that the Court making said order had jurisdiction. If this Court retains jurisdiction on the writ of error, then it would seem that the only question for decision would be whether the United States District Court in making the order setting this real estate apart as exempt was acting with jurisdiction. There was no appeal from that order, and the only time it has ever been questioned is in this Court. In the arguments made above by the Defendants in Error upon their motion to dismiss, necessarily the merits to some extent have been discussed, and the arguments there made will not be repeated here. We can make no stronger argument for the affirmance of

this case than the arguments advanced in the opinion of the State Supreme Court (Trans., 23). The reasoning of the State Supreme Court is logical, forceful and convincing. The claim of exemptions was properly made in the schedules in bankruptcy; Plaintiffs in Error were properly notified before the sale was made under execution, and no suggestion is made that any step taken was in any way defective except that it is contended that this exempt property should have been set aside by a trustee and not by the Court itself. These arguments have all been fully met in the opinion of the State Supreme Court. The rules in bankruptcy adopted by this Court provide that where no necessity exists therefor, a trustee need not be appointed. The bankruptcy court found that no necessity existed for the appointment of a trustee, and there could be no necessity for such appointment when the only property listed was claimed as exempt, and nothing remained to be done but to award such exemptions. Had a trustee been appointed his action in setting apart the exemptions would not have been final, but would have been subject to review by the District Judge.

The jurisdiction of a Federal Court cannot be attacked on a writ of error to a state court from this court, where the jurisdiction has been upheld.

In the case of *Abbott vs. National Bank of Commerce, Supra*, this Court said:

"Besides the decision of the same question by the

"State Court was in support of the jurisdiction of the "Circuit Court of the United States. Where the issue "is as to the validity of an authority exercised under "the United States we cannot review its determination "by the state court, *unless the decision was against the "validity of the authority so exercised.*"

If the motion to dismiss should be denied, then the State Supreme Court should be affirmed.

Respectfully submitted,

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